

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M. Q.

Claimant,

OAH Case No. 2011060268

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter at the Golden Gate Regional Center in San Francisco, California, on August 16, and September 13, 2011.

Claimant M. Q. (claimant) represented herself.¹ Certified Cantonese-English interpreters aided claimant to understand the proceedings and to participate at the hearing. On the first day of the hearing, Mr. Patrick Ng served as claimant's interpreter. And on the second day of the proceeding, Ms. Carmen Li served as claimant's interpreter.

Mr. Paul Ogilvie, M.S.W., Regional Center Manager for the Golden Gate Regional Center (service agency) represented service agency.

On September 13, 2011, the parties submitted the matter for decision and the record closed.

¹ Claimant is referred to by her initials in order to protect her privacy.

ISSUES

1. Does claimant have the unilateral right, absent an agreement reached through an interdisciplinary team meeting for crafting of an addendum to an individual program plan (IPP), to discharge PARCA as the designated provider of claimant's authorized supported living services (SLS or ILS)?
2. May claimant demand replacement of service agency's case manager for her case absent an interdisciplinary team meeting's negotiations between herself and service agency?

FACTUAL FINDINGS

Parties & Jurisdiction

1. Claimant is a 54-year-old woman, who was born on August 20, 1957. She is eligible for regional center services by reason of a diagnosis of seizure disorder.
2. On June 1, 2001, claimant filed a Fair Hearing Request. The reason for a state-level hearing was expressed by her as follows:

Although the GGRC has complied with the judgment to provide me 25 hours of service per month and started it on [May 1] 2011, I don't get any ILS services from May 2011 until now. Because PARCA has delayed providing ILS services that . . . I need [to reach] my goal [the provider has] wasted my time. I have constantly told the case manager that I was unsatisfied with the PARCA and requested to change to another agency. He has not considered my problem and [he] forced me to accept the PARCA service.

On the form, dated June 1, 2011, requesting the fair hearing, claimant set out a description of "what is needed to resolve your problem" as follows:

I want to have a new and responsible case manager in a different unit of GGRC and I want to change the PARCA agency to [another] agency near where I live. I have a right to choose the services and supports that I need. I want to receive ILS agency services because I have got a lots of needs for supports to live independently in the community.

3. On June 6, 2011, the service agency's Chief for Regional Center Services wrote OAH a letter, which constituted a motion to dismiss claimant's fair hearing request because she was raising issues prematurely. On June 27, 2011, OAH, through the regional office's presiding administrative law judge, issued an Order Denying Dismissal. The order was grounded on the rationale that:

When a claimant is dissatisfied with the services and supports currently being provided, an interdisciplinary team meeting should be held to address the claimant's concerns and/or amend the claimant's IPP. (Welf. & Inst. Code, § 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) If claimant is dissatisfied with the offered services and supports following the interdisciplinary team meeting, she may then appeal the regional center's decision or action. (Welf. & Inst. Code, § 4710.5)

In this case, [M. Q.] asserts she has requested certain changes in her services but her requests have been ignored by [service agency]. A claimant may seek a hearing under such circumstances even though an IPP meeting has not been held. (Welf. & Inst. Code, § 4710.5, subd. (a) [claimant may file a fair hearing request if claimant is dissatisfied with any action or decision of service agency.] [Service agency's] motion to dismiss must therefore be denied.

The matter, accordingly, proceeded to hearing on August 16, 2011. Due to claimant's insistence that the proceedings commence at 1:00 p.m., a single date was inadequate for the parties to present evidence and to make arguments. The second hearing date, September 13, 2011, was reserved for claimant's presentation of evidence and the parties to make closing statements.

Claimant's Background Information

4. Claimant resides in a one-bedroom apartment in San Francisco. Claimant lives very independently and she maintains her dwelling place in an "immaculately clean" condition.

Claimant projects intelligence and she speaks three languages (Cantonese, Vietnamese, and English). The records show that claimant acts an interpreter for persons who live in her apartment complex. She can speak English in complex sentence and with fluent and rapid ease. (But before the commencement of each hearing in this matter, claimant insisted that a Cantonese-English interpreter aid her during the proceeding. Yet despite frequent admonishments that she use the interpreter to provide testimony, claimant

launched into elaborate arguments in English during the hearing when she was so inclined to disregard the interpreter's efforts to assist her.

Claimant has traveled on public transportation, but she has a fear of using a bus because of her history of seizures while riding public transportation.

Claimant manages her personal financial matters. She timely pays her bills and makes purchases of essential consumer products as well as discretionary items.

5. Claimant's seizures are "only moderately well controlled by medications." She has suffered right temporal lobe seizures, which are associated with memory loss. She has a history of experiencing two to three minor² seizures (petit mal) per week, and two major seizures (grand mal) during a span of one month. Claimant has sustained injuries due to falls when experiencing grand mal seizures. She takes two medications for the seizure disorder condition. She also takes prescription medications for back pain and for bone strength. (Claimant is very thin as she weighs about 90 pounds and she stands at only about five feet tall.)

6. Service agency provides funds that enable claimant to receive 25 hours of SLS agency services. In addition to the SLS agency assistance each month, claimant receives county government funded In-Home Supportive Services hours each month.

7. On October 18, 2010, a meeting at service agency's facility occurred for the purpose of crafting a "Person-Centered Individual Program Plan" for claimant. The planning meeting consisted of claimant; a Cantonese-English interpreter; Ms. Jennifer Dressen of The Arc-Health and Wellness, who aided claimant; Nicholas Renzi, a service agency social worker who acts as claimant's case manager, and Mr. Ogilvie, a service agency manager. During the meeting, claimant signed a document titled "Consent for Implementation of Individual Program Plan." On October 25, 2010, service agency's personnel signed the IPP.

On December 6, 2010, an addendum to the October 2010 IPP was prepared. The addendum set out a change as, "[Service agency's] planning team decided to use PARCA as the SLS provider for [complainant]"

² At the proceeding on September 13, 2011, claimant appeared to have suffered a petit mal seizure, which involved her going very quite, showing a blank expression on her face, not responding to verbal inquiries, and projecting a slight tremor. The seizure seemed to last less than five minutes. And once she was responsive at the hearing and she began to speak, claimant seemed slow and sluggish for several minutes after her recovery from the worse aspects of the seizure. And thereafter several minutes were given respondent to fully recover while a regional center "doctor" conferred with claimant in the hearing room. Claimant insisted on resuming the hearing despite an offer that the proceeding adjourn for a future date.

On January 11, 2011, PARCA submitted an 11-page document titled “Independent Living Skills Program – Individual Service Plan.” The document set out training objectives for claimant’s benefit in four areas: personal/social, domestic, financial and community. The document prescribed estimated time for each training phase. And the document outlined implementation strategies to attain the objectives for claimant’s independent living.

On April 15, 2011, service agency issued a quarterly summary for the period beginning February 1, 2011. The report included an account of a meeting among service agency’s personnel, staff from PARCA and claimant. Among other things, the report noted:

[Claimant] agreed to stop raising her voice in public and arguing on the phone with PARCA staff. She agreed to ask questions with PARCA staff if she is unsure about an aspect of the service. [Claimant] and SLS worker, Evelyn discussed a schedule for the SLS hours needed The new schedule will start [May 1] 2011. The (sic) seems to be doing well otherwise, living independently in her current residence and [claimant] may only need assistance with navigating resources in the community rather than support in the home.

On May 5, 2011, there was an addendum to the IPP that prescribed that “the need for 25 hours per month of service was warranted.” The supports needed were set out as “Supported Living Services provided by PARCA-SLA . . . effective 5/1/11 to 4/30/12.”

Service Agency’s Evidence

8. Mr. Ron Pier offered credible and persuasive evidence at the hearing of this matter.

Mr. Pier is the Program Manager for PARCA, which was designated in approximately January 2011 to act as the service provider for the independent living program that is funded by service agency. One of Mr. Pier’s important roles regarding PARCA work with claimant is his scheduling of the workers who actually deliver SLS for claimant’s benefit.

Since the commencement of PARCA’s work with claimant, Mr. Pier has heard numerous reports from PARCA workers regarding the difficulties experienced in attempting to aid claimant within the terms of the SLS plan. Among other things, PARCA’s workers have been frustrated by respondent’s rigid time frame during which the workers can meet with claimant. Claimant was frequently unavailable to meet with the PARCA workers.

A PARCA worker experienced claimant’s restrictions on when she could receive supportive living services because claimant served as a volunteer for her neighbors. Claimant had extensive time periods that conflicted with the time for claimant was willing to receive SLS services from the PARCA worker. Also, a PARCA worker reported being upset

with claimant's demands that the worker park illegally in "red zones" near the apartment building where claimant resided to wait for claimant to exit the building on days when the worker had agreed to drive claimant to a library for instruction on using a computer. On several occasions, claimant vented her anger towards the PARCA worker for unknown reasons including yelling at the worker in public settings.

Mr. Pier never heard any complaint directly voiced by claimant that she wished to stop receiving SLS through PARCA. As recently as late April 2011, Mr. Pier, the PARCA worker, claimant and a representative of service agency had a meeting. An agreement was supposedly reached during April 2011 whereby claimant expressed willingness to continue to receive independent living services through PARCA.

After receiving claimant's complaints about the initial service worker-Evelyn Paragon, arrangements were made by Mr. Pier to assign a different PARCA worker to aid claimant with reaching independent living objectives. But claimant refused to cooperate with scheduling a meeting to meet the new worker.

As of the date of the hearing in this matter, Mr. Pier noted that PARCA had concerns regarding that entity's management's reluctance to provide SLS to claimant due to her acts that made her an uncooperative and ill-mannered SLS recipient. Only upon claimant's prospective forthright commitment to comply with the existing SLS plan, and mutually agreed upon addenda thereto, would PARCA be willing to continue to aid claimant under the terms of the independent living service plan.

9. Ms. Evelyn Paragon offered compelling testimonial evidence at the hearing of this matter.

Ms. Paragon, as a PARCA employee, worked with claimant for approximately three months towards objectives under a SLS plan. During her association with claimant, Ms. Paragon was frequently frustrated and upset by claimant's disposition for being uncooperative and possessed of a volatile personality. Often, claimant had schedule conflicts that prevented Ms. Paragon from working with claimant on previously agreed upon dates. When they did meet, claimant often raised her voice or yelled at Ms. Paragon. And there were situations and circumstances that Ms. Paragon could not gain claimant's cooperation to sign the worker's time sheet so that she could be paid for the time spent with claimant.

10. Mr. Nicholas Renzi offered compelling and credible testimonial evidence at the hearing. Mr. Renzi is a social worker who has been employed by service agency for approximately four years. He has been claimant's case manager for approximately 15 months. Mr. Renzi has been directly involved with the service agency's provision of services to claimant over that period of time.

Mr. Renzie was credible when he asserted at the hearing of this matter that the service agency's records for claimant reflect that service agency has been attentive and diligent in meeting claimant's requests and objectives to gain greater community integration and success through independent living services.

After service agency assumed the responsibility to fund independent living services through a vendorized non-profit provider, service agency dispatched contract bid requests to 13 separate agencies. During the contract solicitation period, 11 SLS agencies did not respond to service agency. The two agencies that responded were The Light House and PARCA.

Before service agency transmitted bids to provide claimant with SLS, Mr. Renzi determined that bids would be sent to three SLS providers located in San Francisco because either those agencies had expressed a disinterest to work with claimant or that claimant had voiced a desire not to work those SLS providers.

11. PARCA was selected to provide claimant with independent living services because its bid showed it to be more cost effective than The Light House, which was the only other SLS provider that expressed an interest to serve claimant. Hence in accordance with the directive at Welfare and Institutions Code section 4648, subdivision (a)(6)(D), PARCA was determined to be the most cost effective agency that was suitable to meet the needs of claimant.

12. Mr. Renzi performed his professional responsibilities in serving claimant when she complained about PARCA's provision of independent living services. When he first heard claimant's complaint regarding PARCA, Mr. Renzi was reasonable when he sought to encourage claimant to seek to "work out" the problems with the PARCA aide. Mr. Renzi was not neglectful towards claimant when he imparted to her that there were barriers to discharging PARCA as her SLS provider, especially in light of claimant's poor history with other SLS providers and the fact that only one other agency had responded to the service agency's solicitation for providers to serve claimant.

And before June 1, 2011, when claimant filed her fair hearing request, Mr. Renzi never received a complaint from claimant regarding a demand that service agency's assigned case manager had neglected claimant's requests or otherwise engaged in substandard work so as to justify claimant's unilateral demand that Mr. Renzi be removed as case manager to her case. Because of her failure before the filing of the fair hearing request so as to alert service agency about her demand for Mr. Renzi's removal, service agency was not able to investigate the matter and then to take necessary measures to meet the objectives of the parties to the controversy.

Claimant's Evidence

13. Claimant's evidence at the hearing of this matter was neither persuasive nor compelling. Her arguments do not indicate that service agency has failed to meet the requirements of the Lanterman Act to provide claimant with independent living services through the subject SLS provider. Her assertions regarding her present preferences are unreasonable in the context of seeking a state-level fair hearing when she had not brought her complaints to the service agency before filing the request of an administrative adjudicative hearing. Claimant has not exhausted the remedy of meeting with service agency personnel in interdisciplinary meetings for the purpose of resolving her objections to the extent or method of providing her with SLS.

14. Despite the nature of claimant's volatile arguments, her evidence does not overcome the reasonable determination of the service agency's personnel regarding a need for claimant to interact with service agency to create, if necessary, an addendum to the IPP that could address the issues in this matter.

15. Claimant failed to establish that her SLS provider, PARCA, should be unilaterally discharged without first the parties participating in an IPP meeting to address claimant's objections to PARCA. Nor has claimant established the service agency's assigned case manager should be unilaterally changed without first the parties participating in an IPP meeting to address claimant's objections to the current case manager.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof for this Appeal

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this controversy. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. Where a claimant seeks to establish the propriety of an action not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. In this case, claimant has the burden of proof. Claimant did not meet her burden.

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act,

regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports may include training, recreation, camping, community integration services and social skills training. (*Ibid.*) The determination of which services and supports the regional center shall provide is made “on the basis of the needs and preferences of the consumer . . . [and] shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (*Ibid.*) As the California Supreme Court recognized in *Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390, while a regional center has “no discretion at all in determining *whether* to implement” an individual program plan, it has “wide discretion in determining *how* to implement” an individual program plan. (*Emphasis added.*)

As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual . . . with developmental disabilities and takes into account the needs and preferences of the individual . . . as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

However, Welfare and Institutions Code section 4646.4, subdivision (a), provides:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.

4. The Lanterman Act, thus, establishes that a consumer's preferences are to be given consideration in a regional center's decision-making processes in providing the consumer with required services. But such other factors as cost effectiveness and availability of the service are to be included in the regional center's ultimate determination. In this matter, claimant did not show that she first brought her concerns, which are issue, to the service agency before filing the request for a fair hearing. And the weight of the evidence indicates that claimant's demands are unreasonable and not justified.

Under the circumstances established by the evidence, claimant does not have a legally sufficient basis to seek an order that directs Golden Gate Regional Center to either discharge an agreed upon independent living service agency, or to remove the assigned case manager from the work of providing assistance to claimant, absent an interdisciplinary team meeting during which the parties can meet and confer with the objective of resolving any controversy associated with the implementation of an Individual Program Plan.

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ORDER

Claimant M. Q.'s appeal is denied.

DATED: September 27, 2011

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5 subdivision (b)(2). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.